United Nations CRC/C/OPSC/PRT/CO/1

Convention on the Rights of the Child

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Committee on the Rights of the Child

# Concluding observations on the report submitted by Portugal under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the initial report of Portugal (CRC/C/OPSC/PRT/1) at its 1862nd meeting (see CRC/C/SR.1862), held on 23 January 2014, and adopted at its 1875th meeting, held on 31 January 2014, the following concluding observations.

## I. Introduction

2. The Committee welcomes the submission of the State party's initial report and its written replies to the list of issues (CRC/C/OPSC/PRT/Q/1/Add.1), which allowed for a better understanding of the situation in the State party.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with its concluding observations on the State party's third and fourth periodic reports under the Convention on the Rights of the Child and initial report under the Optional Protocol on the involvement of children in armed conflict, both adopted on 31 January 2014.

## II. General observations

### Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including:

(a) Law No. 59/2007 amending the Penal Code, which extends the crime of trafficking in persons for the purposes of sexual exploitation to include forced labour, trafficking in organs and other forms of trafficking;

* Adopted by the Committee at its sixty-fifth session (13-31 January 2014).

(b) Law No. 60/2013 of 23 August 2013, amending the Penal Code, which explicitly includes begging, slavery and the exploitation of other criminal activities among the purposes of trafficking in human beings.

5. The Committee also notes with appreciation the State party's ratification of the:

(a) Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 24 September 2013;

(b) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 28 January 2013;

(c) Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 15 January 2013;

(d) Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, on 23 August 2012;

(e) Council of Europe Convention on Action against Trafficking in Human Beings, on 27 February 2008.

6. The Committee notes as positive the following institutional and policy measures:

(a) The establishment of the Observatory of Trafficking in Human Beings in November 2008;

(b) The adoption of the Second National Plan against Trafficking in Human Beings (2011-2013), which includes measures to address child trafficking, in 2010.

## III. Data

7. The Committee notes with concern the lack of a comprehensive system for the collection of disaggregated data covering all offences under the Optional Protocol, which would inform the State party's policy decisions and enable it to analyse and assess progress in the implementation of the Protocol.

8. **The Committee recommends that the State party urgently establish a comprehensive and systematic mechanism for data collection, analysis, monitoring, and impact assessment, covering all areas of the Optional Protocol. The data should be disaggregated by, inter alia, sex, age, national and ethnic origin, geographical location and socioeconomic status, with particular attention to children in the most vulnerable and marginalized situations. Data should also be collected on the number of prosecutions and convictions, disaggregated by the nature of the offence.**

## IV. General measures of implementation

### Legislation

9. While welcoming the amendment of September 2007 to the Portuguese Criminal Code, which strengthened protection of children against all forms of sexual exploitation, the Committee remains concerned that the existing legislation does not distinctly address all offences covered by the Optional Protocol, particularly the sale of children, a concept which is similar to but not identical to trafficking in persons.

10. **In line with articles 2 and 3 of the Optional Protocol, the Committee urges the State party to fully incorporate the Protocol in its domestic legal system with a view to prohibiting expressly by law all offences covered by it. The Committee particularly**

**recommends that the State party ensure that the sale of children is defined in its legislation explicitly and in accordance with the provision on sale contained in the Protocol and that all elements of the Protocol, including the sale of children for forced labour and the transfer of organs for profit, are prohibited.**

## National plan of action

11. The Committee appreciates the adoption of the various plans and strategies relating to children, including the Initiative for Childhood and Adolescence, in 2007. The Committee is nevertheless seriously concerned about the lack of a comprehensive policy and strategy on children, addressing all issues covered by the Optional Protocol.

12. **The Committee recommends that the State party expedite the elaboration and adoption of a comprehensive national plan of action that incorporates all issues covered by the Optional Protocol, taking into account the Declaration and Agenda for Action and the Global Commitment adopted at the First, Second and Third World Congresses against Commercial Sexual Exploitation of Children, held in Stockholm, Yokohama, Japan, and Rio de Janeiro, Brazil, in 1996, 2001 and 2008, respectively. It also recommends that the plan be regularly assessed and evaluated with respect to the progress achieved and that adequate human, technical and financial resources be provided for its implementation.**

## Coordination and evaluation

13. The Committee notes that the Portuguese National Human Rights Committee acts as an interministerial body to coordinate all governmental actions on human rights. However, the Committee is concerned about the lack of a mechanism for the overall coordination of the implementation and evaluation of policies and programmes under the Optional Protocol.

14. **The Committee recommends that the State party designate a single national mechanism responsible for leadership and effective coordination and evaluation of all activities under the Optional Protocol at the national, provincial and district levels. The Committee specifically recommends that the State party allocate sufficient and adequate human, technical and financial resources for such a mechanism, to ensure that its mandate is fulfilled.**

## Dissemination and awareness-raising

15. The Committee notes as positive the fact that the Optional Protocol has been translated into Portuguese and is available online. However, the Committee is concerned that the State party lacks a systematic and comprehensive approach to the dissemination of the Protocol, which has contributed to a low level of understanding and awareness of the Protocol among the public, including children themselves, and professionals working for and with children.

16. **The Committee recommends that the State party strengthen its efforts to make the provisions of the Optional Protocol widely known to the public at large, including to children in a child-friendly manner, their families and communities. The Committee also recommends that the State party develop, in close cooperation with relevant government agencies, civil society organizations, the media, the private sector, communities and children, awareness-raising programmes, including**

**campaigns, on issues covered by the Protocol and on the protection measures provided against such practices in national laws.**

### Training

17. The Committee appreciates that the State party provided several training programmes to law enforcement personnel and judicial authorities on human trafficking. It also notes that the Prosecutor General's Office is currently developing a training programme on investigating child pornography. The Committee is concerned, however, that training for professionals working with and for children is neither multidisciplinary nor systematic and does not include all areas covered by the Optional Protocol.

18. **The Committee urges the State party to provide multidisciplinary and systematic training on the Optional Protocol, especially for judges, prosecutors, social workers and law enforcement and immigration officials at all levels. The Committee also urges the State party to earmark the necessary resources to conduct such training in all areas covered by the Protocol.**

### Allocation of resources

19. The Committee regrets the lack of clearly identifiable budget allocations assigned to activities designated to implement the Optional Protocol, including investigation and prosecution of the offences covered by the Protocol and the provision of assistance to child victims.

20. **The Committee recommends that the State party provide identifiable budget allocations to implement the Optional Protocol. It also recommends that it take all possible measures to ensure that sufficient resources are allocated equitably throughout the country to address all issues covered by the Protocol, providing, in particular, the necessary human, technical and financial resources for the development and implementation of programmes aimed at the prevention, protection, physical and psychological recovery and social integration of victims, as well as the investigation and prosecution of offences covered by the Protocol.**

## V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2))

### Measures adopted to prevent offences prohibited under the Protocol

21. The Committee is seriously concerned that child sexual exploitation, including child sex tourism, has increased in the State party, as indicated in its report. The Committee is further concerned that the austerity measures adopted by the State party since 2010 have deepened child poverty, and thereby increased children's risk, especially for those in the most vulnerable situations, such as Roma children, of being used for trafficking, sale, forced labour and sexual exploitation. In this context, the Committee notes with concern that a bill advocating the creation of an extraordinary programme to eradicate child poverty was rejected in the Parliament in February 2013.

22. **In the light of article 9, paragraphs 1-and 2, of the Optional Protocol, the Committee recommends that the State party urgently assess the impact of austerity measures on children's rights under the Protocol and adopt comprehensive and targeted social policies to address the root causes of offences under the Protocol,**

**particularly child poverty and the lack of access to social welfare programmes and education, and to target children in the most vulnerable situations, such as children in street situations and Roma children. The Committee specifically recommends that the State party undertake all possible measures for the early identification of children who are especially vulnerable to becoming victims of sale and other crimes covered by the Protocol, and link such measures to existing child protection programmes and poverty reduction strategies.**

### Child trafficking

23. The Committee is concerned that the State party continues to be a destination, transit and source country for children subjected to trafficking for sexual exploitation and forced labour. It is also concerned that there is an absence of comprehensive responses, including preventive interventions, to child trafficking in the State party.

24. **In accordance with the provisions of the Optional Protocol, the Committee recommends that the State party adopt a comprehensive policy with targeted measures to address the root causes of child trafficking, focusing on children in the most vulnerable and marginalized situations. The Committee also urges the State party to strengthen international assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences covered by the Protocol to deal with the existing problem of cross-border trafficking for the purpose of forced labour and sexual exploitation.**

## VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3, 4 (2)-(3) and 5-7)

### Existing criminal or penal laws and regulations

25. The Committee notes as positive the August 2007 amendment of the Criminal Code, which criminalized many acts and activities referred to in article 3, paragraph 1 (c), of the Optional Protocol. However it is concerned that:

(a) The amendment of the Criminal Code does not cover all crimes, such as the solicitation of children for sexual purposes and accessing child pornography by means of information and communications technology;

(b) The existing legislation does not address distinctly all offences covered by the Optional Protocol, particularly the sale of children.

26. **The Committee recommends that the State party:**

**(a) Bring its Criminal Code into full compliance with articles 2 and 3 of the Optional Protocol, in order to ensure that all offences under the Protocol, including the solicitation of children for sexual purposes and accessing child pornography by means of information and communication technology are criminalized;**

**(b) Define, regulate and criminalize the sale of children in accordance with article 3 of the Optional Protocol.**

## Impunity

27. While noting the law enforcement initiatives to improve and expedite the investigations of child sexual exploitation online, including child pornography, the Committee is deeply concerned about the low number of investigations, prosecutions, and convictions for offences under the Optional Protocol. Furthermore, the Committee is deeply concerned that the highest numbers of reported crimes against children in the State party are "abductions" and "kidnappings" of children, who may be sold or trafficked for labour or sexual exploitation.

28. **The Committee recommends that the State party provide specific information on investigations, prosecutions and the punishment of perpetrators of offences under the Optional Protocol, including on "abductions" and "kidnappings" of children, in its next periodic report. The Committee also urges the State party to:**

**(a) Allocate sufficient funding to enable officials to fully enforce legislation related to the Optional Protocol, and ensure that they receive appropriate training; Establish a plan of action to coordinate and strengthen law enforcement investigation practices on cases of child abduction, child prostitution and child pornography, especially in communities and geographical areas vulnerable to such crimes, and to vigorously ensure that all cases of missing children are investigated and prosecuted to the full extent of the law and that such crimes are effectively prevented.**

## Liability of legal persons

29. While the Committee notes as positive the project entitled *Internet Segura* ("Safe Internet"), it is concerned that the State party's legislation does not oblige telephone service providers, banking services and Internet service providers to report the detection of pornographic sites involving children on their networks or provide information to law enforcement personnel about persons who purchase or distribute child pornography and related content.

30. **The Committee recommends that the State party amend its legislation to require Internet service providers, telephone service providers and banking services to report the detection of pornographic sites involving children on their networks and to provide information to law enforcement officials about persons who distribute child pornography and related content.**

## Extraterritorial jurisdiction

31. The Committee notes with satisfaction that article 5 of the Portuguese Criminal Code provides for extraterritorial competence and that Portuguese jurisdiction may also be established in relation to the criminal offences referred to in the Optional Protocol, if the acts are committed against Portuguese nationals or by Portuguese nationals who are present in Portugal at the time of the offence and are found on Portuguese territory. However, the Committee notes with concern that extraterritorial jurisdiction only extends to such crimes as long as the offender is found in Portugal and cannot be extradited or surrendered in the context of the European arrest warrant or other international cooperation instrument to which Portugal is a party.

32. **The Committee recommends that the State party take measures to ensure that its national legislation enables it to establish and exercise extraterritorial jurisdiction over all the crimes covered by the Optional Protocol, without any conditions,**

**regardless of the difficulties linked to the extradition of the perpetrators of the offences.**

## VII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

### Measures adopted to protect the rights of child victims

33. The Committee notes as positive the fact that the State party has improved the protection of non-national child victims of trafficking by granting them the right to a recovery and reflection period of more than 60 days, based on the child's best interests. The Committee is however concerned that:

(a) Law No. 23/2007 of 4 July 2007 stipulates that protection and assistance to victims of trafficking are conditional upon the victim's agreement to cooperate with the courts or upon their personal situation; also, there is an absence of explicit legislation entitling child victims of the offences under the Optional Protocol to protection and compensation;

(b) Protection and security for child victims of sale and trafficking remain inadequate, mainly owing to an insufficiency of safe and appropriate accommodation;

(c) Training for officials on the identification of child victims of offences under the Optional Protocol, particularly trafficking victims, is largely insufficient;

(d) There is no specific provision in national legislation on compensation for victims of offences under the Optional Protocol.

34. **The Committee recommends that the State party strengthen measures to protect the rights and interests of child victims of all the offences under the Optional Protocol. In particular it recommends that the State party:**

**(a) Amend Law No. 23/2007 to ensure that all child victims have access to adequate protection and assistance, regardless of their consent to cooperate with the courts or in the implementation of the trafficking legislation; clearly establish by law the right of child victims to receive protection and assistance: and make remedies, including compensation, available to child victims for violations of their rights;**

**(b) Strengthen the protection and security of child victims, including by extending the provision of safe and appropriate accommodation and emergency shelters throughout the territory of the State party;**

**(c) Provide systematic and regular training for all officials and professionals working with or for child victims, inter alia, the police, lawyers, prosecutors, judges, medical staff, social workers, migration officials and the media, to enable them to effectively identify child victims of offences under the Optional Protocol and assist and protect them, including during all the stages of the criminal justice process;**

**(d) Ensure that all child victims of the offences covered by the Optional Protocol are provided with access to adequate procedures to seek compensation, without discrimination, in accordance with article 9, paragraph 4, of the Protocol.**

### Recovery and reintegration of victims

35. The Committee is seriously concerned that the State party has not adopted adequate and appropriate measures for the recovery and reintegration of child victims of all offences under the Optional Protocol, including victims of trafficking for sexual exploitation and forced labour. In particular, the Committee is concerned that:

(a) Medium- and long-term rehabilitation programmes appropriate to children's needs and counselling services for all child victims of offences under the Optional Protocol are largely inadequate;

(b) Appropriate accommodation for child victims, especially child victims of trafficking, is unavailable mainly owing to budgetary constraints.

36. **The Committee urges the State party to take all the appropriate measures for the physical and psychological recovery and social reintegration of child victims of offences under the Optional Protocol. In particular, the Committee urges the State party to:**

**(a) Develop programmes to provide medium- and long-term support programmes, particularly rehabilitation and psychosocial services, for all child victims of offences under the Optional Protocol;**

**(b) Take every necessary measure to facilitate and increase access to appropriate accommodation for child victims of offences, particularly children in the most vulnerable situations, and increase the budget allocations to ensure that there is sufficient such accommodation and that it is well equipped;**

**(c) Seek technical assistance from the United Nations Children's Fund and other United Nations agencies in the implementation of these recommendations.**

## VIII. International assistance and cooperation (art. 10)

### Multilateral, bilateral and regional agreements

37. **In the light of article 10, paragraph 1, of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention and the detection, investigation, prosecution and punishment of those responsible for any of the offences covered by the Protocol.**

## IX. Follow-up and dissemination

### Follow-up

38. **The Committee recommends that the State party take all the appropriate measures to ensure full implementation of the present recommendations, inter alia, by transmitting them to the relevant government ministries, Parliament, and national and local authorities for appropriate consideration and further action.**

### Dissemination of concluding observations

39. **The Committee recommends that the report and written replies submitted by the State party and the Committee's concluding observations be made widely available, including through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate and awareness of the Optional Protocol and its implementation and monitoring.**

## X. Next report

40. **In accordance with article 12, paragraph 2, of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Protocol in its next periodic report under the Convention on the Rights of the Child, to be submitted in accordance with article 44 of the Convention.**